

Legislative Notice

No. 28

November 8, 2001

S. 1428 – Intelligence Authorization Act for FY 2002

Calendar No. 214

Reported by the Senate Select Committee on Intelligence on September 14, 2001 (S. Rept. 107-63) and by the Senate Armed Services Committee on November 1, 2001 (S. Rept. 107-92).

NOTEWORTHY

- The Senate will begin consideration of S. 1428, the Intelligence Authorization Act for FY 2002, on Thursday, November 8. By unanimous consent, only relevant amendments are in order, as well as one amendment by Senator Bob Smith and one by Senator Leahy. [See Possible Amendments, p. 7.] The House passed its version of the Intelligence Authorization Act for FY 2002, H.R. 2883, on October 5 by voice vote.
- The Committee report highlights four priority areas addressed in the bill: revitalizing the National Security Agency; correcting deficiencies in human intelligence; addressing the imbalance between intelligence collection and analysis; and rebuilding a robust research and development program.
- To address issues of intelligence collection, analysis and dissemination, the bill requires a number of reports, including: a review of legal authorities to conduct computer attack and computer intrusion investigations; and an assessment of the feasibility and advisability of establishing an element of the federal government to provide for effective and efficient analysis and dissemination of foreign intelligence related to the financial capabilities and resources of international terrorist organizations.
- Further, the report recognizes a number of intelligence issues relevant to counterterrorism, including the relationship between intelligence and law enforcement and the sharing of information among government agencies, and makes certain recommendations. [Note: The Intelligence Committee marked up S. 1428 prior to the events of September 11, and prior to passage of H.R. 3162, P.L. 107-56, the Patriot Act of 2001.]
- Section 3 contains several general provisions, which include: modifications of authorities for protection of intelligence community employees who report urgent concerns to Congress; and a review of protections against the unauthorized disclosure of classified information.

BACKGROUND

Among the purposes of the Intelligence authorization bill are: to authorize appropriations for FY 2002 for intelligence activities and programs, and for the Central Intelligence Agency (CIA) retirement and disability system; to modify authorities for protection of Intelligence Community employees who report urgent concerns to Congress; and to require the Attorney General to review and report to Congress regarding the protections against unauthorized disclosure of classified information.

As stated in its report, the classified nature of the United States' intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this report. The Committee has prepared a classified supplement to this report, which explains the full scope and intent of the Committee's action, which is available for review by any member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

The Senate Select Committee on Intelligence (SSCI) conducted a detailed review of the FY 2002 budget requests for the National Foreign Intelligence Program (NFIP) of the Director of Central Intelligence; the Joint Military Intelligence Program (JMIP) of the Deputy Secretary of Defense; and the Tactical Intelligence and Related Activities (TIARA) of the military services. The Committee's review entailed a series of briefings and hearings with senior intelligence officials, numerous staff briefings, review of the budget justification materials, and numerous written responses provided by the intelligence community to specific questions posed by the Committee. The Committee also monitored compliance with numerous reporting requirements contained in the statute. Each report was scrutinized by the Committee and appropriate action was taken when necessary.

In accordance with a Memorandum of Agreement with the Senate Armed Services Committee (SASC), the Committee is including recommendations on both JMIP and TIARA in its public report and classified annex. The Senate Intelligence Committee has agreed that JMIP and TIARA issues will continue to be authorized in the defense authorization bill. In its report, the Senate Armed Services Committee noted that S. 1428 was marked up by the SSCI prior to the events of September 11, and cited particular concerns about a number of the proposed reductions to the budget request for certain programs within the General Defense Intelligence Program and National Reconnaissance Program, and urged the conferees to restore funding for these important programs. In addition, the SASC proposes an amendment to S. 1428, which would clarify the requirement for consultation with appropriate defense officials and ensure that all relevant oversight committees are recipients of information on activities within their respective jurisdictions.

In addition to its annual review of the Administration's budget request, the Committee performs continuing oversight of various intelligence activities and programs.

HIGHLIGHTS

The report highlights the Committee's priority issues.

The FY 2002 Intelligence Budget: A Five-Year Plan

The budget request submitted by the President includes a substantial increase for programs funded in the National Foreign Intelligence Program. The Committee believes this funding increase should represent the first installment of a five-year effort to correct serious deficiencies that have developed over the past decade in the Intelligence Community.

In this budget, the Committee seeks to highlight four priority areas that must receive significant attention in the near term if intelligence is to fulfill its role in our national security strategy. Those are:

- Revitalizing the National Security Agency (NSA)
- Correcting deficiencies in human intelligence
- Addressing the imbalance between intelligence collection and analysis, and
- Rebuilding a robust research and development program.

The budget lays out a five-year plan for addressing each of these areas.

The Committee's top priority last year, as well as this year, is the revitalization of the NSA. In this respect the Committee is encouraged that the Administration also has made this a priority and requested significantly more resources for the NSA in the FY 2002 budget. As for human intelligence, the five-year plan should enable this critical component of the intelligence community to meet the increasingly complex and growing set of collection requirements.

Congress and the Intelligence Community

- Citing concerns with Executive branch compliance in some cases with the requirement to provide the intelligence committees with written notice of presidential covert action findings, the Committee states its belief that written copies of the President's findings regarding such action are essential to effective congressional oversight. While the common practice of the Executive branch has been only to provide oral briefings on these sensitive programs, the Committee expects this practice to be rectified to conform with the requirement for a written finding to the chairmen of the House and Senate intelligence committees.
- Citing the need to ensure that Congress receives intelligence in a form tailored to its unique needs to enable legislators to perform their policymaking responsibilities efficiently and effectively, the Committee directs the Director of Central Intelligence (DCI) to prepare a comprehensive report setting forth, at a minimum, the existing mechanism established under previous laws to ensure

Congress is appropriately served in its policymaking role as an intelligence consumer and making recommendations for changes in such mechanisms, if needed.

Intelligence Community Personnel

- Citing its concern that the lengthy process of obtaining required security clearances leads candidates to accept jobs in the private sector, the Committee includes funds for a pilot program at the National Security Agency to provide educational opportunities to recent graduates who are waiting for the security clearance process to be completed. After studying the efficacy of this program, the DCI shall make a recommendation to the Committee on the possible expansion of this program as part of the FY 2004 budget request.
- The Committee believes that an important factor contributing to the attrition among the senior ranks is dissatisfaction with the promotion policies within various Agency directorates. Accordingly, the Committee directs the CIA Inspector General to conduct an inspection of the CIA's promotion policy of all Agency employees as well as those in the Senior Intelligence Service from 1995 to present, and to provide a written report to the intelligence oversight committees by March 1, 2002.

Intelligence Collection, Analysis and Dissemination

Review of legal authorities to conduct computer attack and computer intrusion investigations

- Citing the numerous problems the FBI and CIA have had in determining their own and one another's legal authorities and responsibilities in investigations of computer attacks and intrusions, the Committee directs the Attorney General, the FBI Director, the DCI, and the Defense Secretary to complete a review by March 1, 2002, of the legal authorities and responsibilities of the government entities customarily involved in investigations of computer attacks and intrusions which threaten national security interests.

Counterterrorism

- Noting that recent assessments of U.S. terrorism and structures for countering terrorism point to the need for focusing attention on response, the Committee calls for a counterterrorism intelligence program, to be designed within the intelligence community, with Congressional oversight. The Committee outlines a number of important issues to be explored, including: the relationship between intelligence and law enforcement; sharing of information among government agencies; financial intelligence related to international terrorism; and the possible need for a national virtual translation center. Consequently, the Committee makes certain recommendations aimed at treating terrorism as a long-term threat to U.S. national security.

Counterdrug

- In the aftermath of the tragic event of a Peruvian air force fighter plane mistakenly shooting down an American missionary plane, the Committee conducted a thorough review of U.S. Government

involvement in the air bridge drug denial program. The recommendation: that annual reviews of safeguards and procedures should be conducted if the U.S. Government is involved in such programs. Therefore, the Committee includes in this bill a provision requiring such annual presidential certification and reporting to Congress concerning such programs.

Counterintelligence

Department of Energy compliance with counterintelligence and security initiatives

- Citing a General Accounting Office assessment that a number of counterintelligence and security initiatives have not been completed, the Committee directs the Energy Secretary to provide a written report to the intelligence oversight committees, and other appropriate committees by February 1, 2002, regarding the status of implementation of all outstanding counterintelligence and security initiatives.

Storage of Sensitive Compartmented Information

- The Committee directs the DCI to provide a written report to the intelligence oversight committees by February 1, 2002, summarizing the results of self-inspections put in place during the summer by the DCI to evaluate the policies and procedures for organizations to protect Sensitive Compartmented Information facilities and information. This is, in part, a response to efforts to address the series of serious lapses and counterintelligence failures at the State Department.

DCI guidelines for initiation of counterintelligence damage assessments

- Citing concerns about the timeliness with which counterintelligence incidents (including espionage cases) have been referred by the DCI to the Office of the National Counterintelligence Executive (ONCE) to conduct damage assessment, the Committee directs the DCI to provide, by February 1, 2001, written guidelines for determining what counterintelligence incidents warrant a damage assessment and a time frame for referring such matters to this Office.

Assessment of alternative technologies to the polygraph

- The FBI, the CIA, and the DoD are directed to conduct jointly an assessment of the accuracy, reliability, and desirability of the TruthScan (Scientific Content Analysis) technology, particularly for counterintelligence purposes, as an investigative tool to supplement the use of the polygraph.

Intelligence Community Financial Management, Planning and Performance

Adoption of baseline accounting and financial statement standards

- Citing concerns that the financial management shortcomings found in audits of the National Reconnaissance Office (NRO) could possibly exist within other National Foreign Intelligence Program (NFIP) agencies that have not undergone similar scrutiny, the Committee directs an audit be performed on the form and content of the FY 2001 financial statements of the Defense Intelligence Agency (DIA), National Security Agency (NSA), National Imaging and Mapping

Agency (NIMA), and CIA, and report its findings to the intelligence committees by April 1, 2002.

- The Committee further directs the DCI, in consultation with the Defense Secretary, to ensure that all agencies in the DoD-NFIP aggregation receive an audit of their financial statements by March 1, 2005.

Strategic planning and performance goals and measures for the Intelligence Community

- The Committee directs the DCI to produce a comprehensive Intelligence Community strategic and performance plan, as well as complementary strategic and performance plans for intelligence agencies within the NFIP aggregation. The Committee further directs that, within 60 days after enactment of this Act, the intelligence committees be briefed on the DCI's progress in completing the strategic and performance plans. The plan for FY 2003 is to be completed and delivered to the intelligence authorization committees by March 1, 2002.
- In addition, the Committee directs the DCI to submit a report detailing the FY 2003 program performance of the overall Intelligence Community and individual NFIP by March 1, 2004. Thereafter, annual reports on program performance for the previous year should be submitted to the intelligence committees by March 1 of each year.

BILL PROVISIONS

Title I — Intelligence Activities

- Title I authorizes appropriations and personnel ceiling adjustments, and provides details concerning the amount and composition of the Community Management Account.

Title II — CIA Intelligence Agency Retirement and Disability System

- Title II authorizes appropriations for FY 2002 for the CIA Retirement and Disability Fund.

Title III — General Provisions

- A number of provisions are included in this title:
 - Section 305: Amends the 1947 National Security Act to require that notifications to Congress of intelligence activities and failures be made in writing and contain a concise

- statement of facts pertinent to the report and an explanation of the significance of the intelligence activity or failure covered by the report.
- Section 306: Alters the process applied to the handling of complaints or information brought to the CIA Inspector General by requiring that in *all such cases* the complaint or information be forwarded to the DCI, or other agency head, and then to the intelligence committees. (Previously, only complaints that the IG found “credible” were forwarded.)

COST

As stated in its report, the classified nature of the United States’ intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this report. The Committee has prepared a classified supplement to this report, which explains the full scope and intent of the Committee’s action, which is available for review by any member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

ADMINISTRATION POSITION

A Statement of Administration Policy (SAP) was unavailable at press time.

POSSIBLE AMENDMENTS

Under a unanimous consent agreement of November 7, only relevant amendments are in order to the bill. However, also by U.C., two amendments are also in order whether relevant or not: one to be offered by Senator Bob Smith (the Alien Terrorist Removal Act), and one to be offered by Senator Leahy, related to the Smith amendment. Senator Levin, Chairman of the Armed Services Committee, may offer an amendment that would ensure that all relevant oversight committees receive intelligence information within their respective jurisdictions.

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